Robert A. Meister (RM7408)
DLA PIPER RUDNICK GRAY CARY US LLP
1251 Avenue of the Americas
New York, New York 10020
(212) 835-6000
Attorneys for Defendant DLA Piper Rudnick Gray Cary LLP

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OCT 26 2005
U.S.D.C. S.D. N.Y.
CASHIERS

DAVID NORKIN

Plaintiff,

-against-

DLA PIPER RUDNICK GRAY CARY LLP,

Defendant.

Civil Action No:

NOTICE OF REMOVAL

(New York Supreme Index No. 106384/05)

PLEASE TAKE NOTICE that Defendant DLA Piper Rudnick Gray Cary LLP ("DLA Piper"), by its undersigned counsel, hereby removes the state court action described below to the United States District Court for the Southern District of New York, pursuant to 28 U.S.C. §§ 1441, 1446 and 1452(a). In support of this Notice of Removal, DLA Piper states as follows:

THE REMOVED ACTION

1. The removed case is a civil action filed on or about May 9, 2005, in the Supreme Court of the State of New York, County of New York, bearing Index Number 106384/05 and styled *David Norkin v. DLA Piper Rudnick Gray Cary LLP* (the "Removed Action").

2. DLA Piper received a copy of the initial pleading setting forth the claim for relief upon which the Removed Action is based within 30 days from the date of this Notice. This Notice of Removal is therefore timely under 28 U.S.C § 1446(b).

Dockets.Justia.com

PAPERS FROM THE REMOVED ACTION

3. Attached as Exhibit A are copies of all process, pleadings and orders that DLA Piper has received in the Removed Action.

THE VENUE REQUIREMENT IS MET

4. Venue is proper under 28 U.S.C. § 1441(a) and 28 U.S.C. § 1452(a) because this Court is the United States District Court for the district and division corresponding to the place where the Removed Action was pending.

THE COURT HAS SUBJECT MATTER JURISDICTION

5. This is a civil action that arises in or is related to cases under Title 11 of the United States Code. In particular, the case arises in or is related to plaintiff David Norkin's Chapter 7 bankruptcy case (Case No. 97-50042 in the United States Bankruptcy Court for the District of Connecticut) and the Chapter 11 bankruptcy case of Britestarr Homes, Inc. (Case No. 02-50811(AHWS) in the United States Bankruptcy Court for the District of Connecticut).

6. Because the Removed Action arises in or is related to cases under Title 11, this Court has original jurisdiction over it pursuant to 28 U.S.C. § 1334(b). Therefore, DLA Piper may remove the proceedings to this Court pursuant to 28 U.S.C. § 1452(a).

7. To the extent that plaintiff asserts any other basis for relief, it arises out of the same set of facts and is part of the same case and controversy. Therefore, the Court has supplemental jurisdiction of the claim within the meaning of 28 U.S.C. § 1367(a). Accordingly, this is a civil action that would have fallen under the Court's original jurisdiction had it been filed initially with the Court, and removal to the Court is proper under 28 U.S.C. § 1441(a).

THE AMOUNT-IN-CONTROVERSY REQUIREMENT IS INAPPLICABLE

8. Because the Removed Action arises in or is related to cases under Title 11, this Court has original jurisdiction over it pursuant to 28 U.S.C. § 1334(b), without regard to the amount in controversy.

FILING OF REMOVAL PAPERS

9. Pursuant to 28 U.S.C. § 1446(d), DLA Piper will give written notice of the removal of the Removed Action to plaintiff's counsel and will file a Notice of Filing of Notice of Removal with the Supreme Court of the State of New York, County of New York. A true and correct copy of this notice is attached hereto as Exhibit B.

10. By making this certification, DLA Piper does not intend to waive any defense in this action.

WHEREFORE, DLA Piper hereby removes the above-captioned action from the Supreme Court of the State of New York, County of New York, and requests that further proceedings be conducted in this Court as provided by law.

Dated: New York, New York
October 26, 2005

DLA PIPER RUDNICK GRAY CARY US LLP

By: ______________________________
Robert A. Meister (RM7408)
1251 Avenue of the Americas
New York, New York 10020
(212) 835-6000

Attorneys for Defendant
DLA Piper Rudnick Gray Cary LLP

TO: Richard M. Asche, Esq.
Litman, Asche & Gioiella, LLP
45 Broadway, 30th Floor
New York, New York 10006

Exhibit A

[redacted] B 106—Summons with notice, blank court, personal or substituted service, 12 pt. type, 4-94

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

DAVID NORKIN

Plaintiff(s)

against

DLA PIPER RUDNICK GRAY CARY LLP

Defendant(s)

Index No. 05106384
Date purchased

Plaintiff(s) designate(s)
NEW YORK
County as the place of trial.

The basis of the venue is
Defendant's principal place of business

Summons with Notice

Plaintiff(s) reside(s) at
Two Hillside Crescent
New Rochelle, NY 10804
County of WESTCHESTER

To the above named Defendant(s)

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated, May 6, 2005

FILED
MAY 09 2005
NEW YORK
COUNTY CLERK'S OFFICE

LITMAN, ASCHE & GIOIELLA, LLP
Attorney(s) for Plaintiff

Defendant's address:
1251 Avenue of the Americas
New York, New York 10020

Office and Post Office Address
45 Broadway
New York, New York 10006
(212) 809-4500

Notice: The nature of this action is legal malpractice, negligence and breach of fiduciary duty; fraud.

The relief sought is $10,000,000 compensatory damages; $10,000,000 exemplary damages

Upon your failure to appear, judgment will be taken against you by default for the sum of $ 20,000,000 with interest from May 10, 2002 and the costs of this action.

Notice of Entry

PLEASE take notice that the within is a (*certified*) true copy of a duly entered in the office of the clerk of the within named court on

Dated,

Yours, etc.

LITMAN, ASCHE & GIOIELLA, LLP

Attorneys for

Office and Post Office Address

45 BROADWAY ATRIUM

NEW YORK, N.Y. 10006

To

Attorney(s) for

Notice of Settlement

PLEASE take notice that an order of which the within is a true copy will be presented for settlement to the HON.

one of the judges of the within named Court, at

on

at

Dated,

LITMAN, ASCHE & GIOIELLA, LLP

Attorneys for

To

Attorney(s) for

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

DAVID NORKIN,

Plaintiff,

-against-

DLA PIPER RUDNICK GRAY CARY LLP

Defendants.

SUMMONS WITH NOTICE

Signature (Rule 130-1.1-a)

Print name beneath

LITMAN, ASCHE & GIOIELLA, LLP
Attorneys for Plaintiff

Office and Post Office Address, Telephone
45 BROADWAY ATRIUM
NEW YORK, N.Y. 10006
(212) 809-4500

To

Attorney(s) for

Service of a copy of the within is hereby admitted.
Dated

Attorney(s) for

RECEIVED
SEP - 1 2005
BY HAND
DLA PIPER RUDNICK GRAY CARY US LLP

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
-----------------------------------X

DAVID NORKIN,

Plaintiff,

COMPLAINT

-against-

Index No. 106384/05

DLA PIPER RUDNICK GRAY CARY, LLP,

Defendant.

-----------------------------------X

Plaintiff, David Norkin, hereby files his original Complaint against defendant DLA Piper Rudnick Gray Cary, LLP, formerly known in 2002 as Piper Rudnick (hereinafter referred to as "Piper"):

PARTIES

1. Plaintiff David Norkin ("Norkin") is a resident of the State of New York. From 1983 until May 2002, Norkin was President and sole beneficial shareholder of Britestarr Homes, Inc. ("Britestarr"), a New York corporation.

2. Defendant Piper is a limited liability partnership with several offices around the United States, including one in New York, New York, engaged in the practice of law.

FACTUAL BACKGROUND

3. In September 1988, Britestarr purchased approximately twenty-eight (28) acres of real property in Bronx, New York (the "Oak Point Site"). The property is located just across the East River from Manhattan in a well-established

industrial area. The Site is zoned for heavy industrial use and is ideally suited to serve as home to a large power plant, a permitted use.

4. During 1998, a power developer named ABB Equity Ventures ("ABB") sought to develop a power plant project in New York.

5. In late 1998, ABB approached Britestarr through Norkin and commenced negotiations to purchase the Oak Point Site from Britestarr so that ABB could develop a power plant project on the Site.

6. The parties negotiated and entered into an option agreement dated December 31, 1998 (the "Option Agreement"), by which Britestarr granted ABB an exclusive option to purchase the Oak Point Site for three years. In exchange for the three year option, ABB agreed to pay Britestarr option payments totalling $1.4 million.

7. The Option Agreement also served as the sales contract between the parties. Upon exercise, Britestarr could choose to receive $31.4 million in cash immediately in exchange for the property; alternatively, Britestarr could choose to receive an equity interest in the power plant to be built on its property that would entitle Britestarr to receive payments of approximately $225 million over thirty (30) years.

8. In the spring 1999, Norkin retained Piper to assist him and Britestarr in advancing the transaction with ABB.

9. Specifically, Norkin retained Mitch Fenton, a Piper real estate partner, who, in turn, brought into the matter two of Piper's project finance and energy partners, Ken Willig and Dean Colucci.

10. Piper lawyers Willig, Colucci and Fenton assisted Britestarr and Norkin in advancing the transaction so that ABB would ultimately exercise its option and purchase the Oak Point Site from Britestarr.

11. In August 2000, Fenton left Piper and joined Buchanan Ingersoll's New York office.

12. Between February 1, 1999 and August 22, 2001, ABB paid the $1.4 million in option payments to Britestarr, a sub-chapter S corporation.

13. In February 2000, Piper opened a client trust account for Britestarr's benefit (the "Escrow Account"). Of the $1.4 million, Piper received and deposited a little over $1 million into the Escrow Account. Piper then disbursed all of this money to Norkin as compensation for Mr. Norkin serving as Britestarr's President and/or reimbursement for or advance of expenses.

A. Piper advised Norkin on the Britestarr ownership dispute:

14. At some point after Britestarr's formation, record ownership of its stock shares was transferred to Norkin's wife,

Friema Norkin. Thereafter, to finance its purchase of the Oak Point Site, Britestarr obtained a loan from Lloyds Bank. To secure the loan, Lloyds required Friema Norkin to pledge the Britestarr stock shares. In connection with the pledge, Friema Norkin delivered the actual Britestarr stock shares certificate to Lloyds. Thereafter, when Norkin and Friema Norkin divorced, Friema Norkin conveyed her interest in the Britestarr stock shares to Norkin pursuant to their separation agreement and divorce decree. The original share certificate, however, remained with Lloyds. Lloyds was notified in or about 1990 of the divorce of the Norkins and the transfer of stock to David Norkin.

15. Britestarr defaulted on the Lloyds loan. In 2001, ABB stepped into the shoes of Lloyds by purchasing Lloyds' rights against Britestarr, including Lloyds' rights (if any) to the Britestarr shares pursuant to the pledge. ABB commenced a lawsuit in Norkin's personal bankruptcy proceedings contending that Friema Norkin was the rightful owner of the Britestarr stock shares.

16. Piper, as counsel for Norkin and Britestarr, reviewed documents related to the ownership, as between plaintiff and his former wife, of the Britestarr shares, and gave plaintiff advice in his personal capacity as to the ownership of the shares.

17. In spring 2002, ABB conveyed to Piper an offer to pay more than $1 million to extend the option period of 18-20 months. Acceptance of this offer would have enabled Norkin to

settle ABB's claim in his personal bankruptcy over the ownership of the Britestarr shares. Additionally, extending ABB's option would have benefitted Britestarr and plaintiff by giving ABB time to acquire the permits necessary to consummate purchase of the Oak Point property. The one million dollars to be paid for the option would have insured Britestarr's ability to operate for the foreseeable future without the need to consider bankruptcy.

18. Although ABB's one million dollar option/settlement offer was clearly beneficial to both Norkin and Britestarr, Piper failed to even advise Britestarr or Norkin of the offer.

B. Piper erroneously -- or fraudulently -- advises Norkin that Britestarr should file for bankruptcy and that Norkin should reside at President:

19. Between March and May 2002, Piper 1) advised Britestarr to file bankruptcy and 2) advised Norkin to resign as Britestarr's President.

20. Piper's lead bankruptcy lawyer, Tom Califano, along with other attorneys at Piper, filed several pleadings explaining why Britestarr filed bankruptcy. Piper's stated reason for advising Britestarr to file was that bankruptcy would allow Britestarr to quickly liquidate the Oak Point Site in a bankruptcy auction. Piper contended that Britestarr could not sell the property outside bankruptcy due to several impediments.

21. Piper's conclusion that filing bankruptcy would allow Britestarr to eliminate all impediments to a sale was in

error. It made no sense for Britestarr to file bankruptcy in order to sell the Oak Point Site.

22. Britestarr had a perfect alternative to bankruptcy. Rather than filing bankruptcy, Britestarr could have, and should have, accepted ABB's offer to pay Britestarr $1 million in additional option payments to preserve for another 18-20 months Britestarr's ability to sell the Site. Absent a bankruptcy filing and Piper's advice to Norkin personally to resign, Norkin could have and would have remained as Britestarr's President.

D. Piper's advice to Norkin to resign caused him to lose wages:

23. Piper's legal advice to Norkin to resign his position as Britestarr's President caused him to lose his right to obtain a salary and other benefits as President.

E. Piper was operating under a conflict of interest in Spring 2002:

24. During this time Piper was operating under a conflict of interest, which Piper never disclosed to plaintiff. While Piper was representing Britestarr and plaintiff, Piper was simultaneously serving as project counsel for a competing power plant project. In the summer 2001, Piper became project counsel for the TransGas power plant project, which involved developing a large power plant in Brooklyn. This proposed Brooklyn plant would compete with the plant that ABB sought to build on Britestarr's property.

25. Both power plants would sell power into New York. Both projects would compete over the same resources, such as construction financing and agreements to sell power, and permit requirements from the State of New York.

26. Piper stood to receive much larger legal fees as project counsel for the TransGas project than it would receive as landowner's counsel in the Oak Point project.

AS AND FOR A FIRST CAUSE OF
ACTION - BREACH OF FIDUCIARY DUTY

27. Norkin repeats and realleges the allegations made in Paragraphs 1 through 26 as fully set forth herein.

28. As counsel for Norkin, Piper owned a fiduciary duty to Norkin.

29. Piper breached its fiduciary duty to Norkin as follows:

a. representing a competing power plant project beginning in May 2001 -- the TransGas project -- when Piper was obligated to advance the Oak Point project, the project in which its client, Britestarr, was participating, and failing to advise Norkin of the conflict; and

b. failing to advise Norkin of ABB's March 2002 settlement proposal that would have resolved the ownership dispute and left Norkin as Britestarr's President.

30. By engaging in the foregoing acts and misconduct, Piper breached its fiduciary duties to Norkin, and Norkin has

suffered damages in excess of $10,000,000, including the right to receive salary as Britestarr's President.

31. Because Piper acted maliciously, fraudulently, with gross negligence, or with flagrant, conscious disregard for and actual knowledge of probable harm to Norkin, he is entitled to exemplary damages.

AS AND FOR A SECOND CAUSE OF ACTION
PROFESSIONAL MALPRACTICE/NEGLIGENCE

32. Norkin repeats and realleges the allegations set forth in Paragraphs 1-31 as fully set forth herein.

33. Piper, in its capacity as Norkin's attorneys, failed to exercise the reasonable and ordinary care of similarly situated professionals in preparing documents for, transacting business for, and providing advice to Norkin. Piper's standard of care in its representation of Norkin failed to meet the applicable professional standard of care in at least the following ways:

a. It advised Norkin to resign as Britestarr's President rather than advising him and Britestarr to accept ABB's settlement offer; and

b. It failed to advise Norkin of ABB's March 2002 settlement proposal that would have allowed Norkin to remain as Britestarr's rightful owner and President.

34. Norkin has suffered damages in excess of $10,000,000, including the right to receive salary as Britestarr's President.

RELIEF REQUESTED

WHEREFORE, Norkin prays that judgment be entered in his favor as follows:

a) compensatory damages on each cause of action in an amount to be determined at trial, but not less than $10,000,000, which would include the amount of money that he would have received in compensation for serving as Britestarr's President;

b) exemplary damages in an amount in excess of $10,000,000;

c) and such other and further relief as the Court deems just and proper.

Dated: New York, New York
October 6, 2005

Yours, etc.,

Litman, Asche & Gioiella, LLP
Attorneys for Plaintiff

By: ______________________
Richard M. Asche

45 Broadway - 30th Floor
New York, New York 10006
(212) 809-4500

Exhibit B

ROBERT A. MEISTER
DLA PIPER RUDNICK GRAY CARY US LLP
1251 Avenue of the Americas
New York, New York 10020-1104
(212) 835-6000
Attorneys for Defendant
DLA PIPER RUDNICK GRAY CARY LLP

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

DAVID NORKIN, Plaintiff,	:	Index No. 106384/05
vs.	:	
DLA PIPER RUDNICK GRAY CARY LLP., Defendant.	:	NOTICE OF FILING OF NOTICE OF REMOVAL

PLEASE TAKE NOTICE that on October 26, 2005, DLA Piper Gray Cary LLP, defendant in the captioned action, removed this action to the United States District Court, Southern District of New York, by filing a Notice of Removal in that Court. A copy of the Notice of Removal is annexed hereto. Accordingly, and pursuant to 28 U.S.C. § 1446(d), this Court may proceed no further unless and until the case is remanded.

Dated: New York, New York
October 26, 2005

DLA PIPER RUDNICK GRAY CARY US LLP

By:______________________________
Robert A. Meister
1251 Avenue of the Americas
New York, New York 10020-1104
212-835-6000
Attorneys for Defendant
DLA Piper Gray Cary LLP

TO: Richard M. Asche, Esq.
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Attorneys for Plaintiff